



IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

229

CRM-M-65188-2024

DATE OF DECISION: 13.01.2025

RAZIA BEGUM @ RAJIA BEGAM

...PETITIONER

VERSUS

STATE OF PUNJAB

... RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL.

Present: Mr. Edward Augustine George Masih, Advocate for
Mr. J.S. Mehdiratta, Advocate
for the petitioner.

Mr. Jasjit Singh Rattu, DAG, Punjab.

SANDEEP MOUDGIL, J (ORAL)

1. Relief Sought

This petition has been filed under Section 483 BNSS, 2023 for grant of regular bail to the petitioner in Case FIR No. 57, dated 12.06.2022, under Section 364 IPC registered at Police Station Urban Estate, Patiala. However, report under Section 173 Cr.P.C. stands presented under Sections 302, 201 and 34 IPC, 1860.

2. Prosecution story set up in the present case as per the version in the FIR reads as under :-

At this time, it is recorded that one written statement of Baldev Singh son of Fakiria Singh, resident of Balbir Colony, Chauran, P.S. Urban, Patiala aged about 66 years, Mobile No. 85560-02975, written by SI Gurmit Singh 2374 is received at P.S. Urban Estate, Patiala for registration of FIR against unknown persons under sections 364 IPC by hand through Ct. Mandeep Singh 1923, the contents of which are as follows - Statement of Baldev Singh son of Fakiria Singh resident of Balbir Colony, Chauran, P.S. Urban Estate, Patiala, District Patiala aged about 66 years, mobile No. 85560-0297. Stated that I am resident of above-mentioned



address and I have retired from the Department of Food and Supplies. I have two sons, both of them are married. My elder son Feroze Khan is staying separate from me, while my younger son Kasim Mohd. @ Lovely aged about 30 years is staying with me alongwith his family. My son Kasim Mohd. @ Lovely used to tell us that he is serving in an agency of Ford Cars in Delhi. He used to visit home every month and used to return back on Monday morning. Yesterday on 11.06.2022, my son Kasim Mohd @ Lovely came home at 4:00 pm and around 7:30 pm, he went out to attend a party being hosted by his friend, in his car bearing No. CH01-AA-9078, mark Alto, but he did not return home in the night and his mobile phone was also found switched off. Today morning I made a phone call to my elder son Feroze Khan and started searching for my son Kasim Mohd. @ Lovely. His car was found standing on bypass road near Tikoni Market, Opposite Phase-2, Urban Estate, Patiala Road. We checked the same thoroughly and it was found locked on the back seat behind the driver, there was blood stains. When we peeped inside the car through glasses, there was lot of blood on back seat of car. Thereafter, we searched for our son a lot but could not get any clue about him. That condition of car reflects that my son Kasim Mohd @ Lovely might have been murdered by some unknown person(s) or he has been kidnapped and kept at a secret place with an intention to kill him. I alongwith my son Feroze Khan was coming to inform you at Police Station Urban Estate, Patiala, when you met us on the way near Gurudwara Singh Sabha, Phase-2, Urban Estate, Patiala. I have got recorded my statement before you in front of my son Feroze Khan. Statement read, heard and it is correct. My son be searched and necessary legal action may be taken against unknown person(s). sd/-Baldev Singh, Verified by Feroze Khan above named. Attested by SI Gurmeet Singh, P.S. Urban Estate, Patiala, dated 12.06.2022. Police Proceedings - Today I SI alongwith ASI Jaswinder Singh 2517, ASI Gurvinder Singh 583, HC Malkit Singh 522 and Ct. Mandeep Singh 1923 were patrolling in the area on a government vehicle bearing No. PB-11CF-3803 being driven by ASI Kuldeep Singh 979 alongwith laptop and printer, when Baldev Singh son of Fakiria Singh resident of Balbir Colony, Chauran alongwith his son Feroze Khan met us and got recorded his aforesaid statement before me. Which was recorded as per his dictates and after admitting the same as correct he appended his signatures in Punjabi. The statement was further verified by his son Feroze Khan and then attested by me the SI. From the contents of the statement so recorded, offence punishable under section 364 IPC is found to have been committed. As such, after recording the statement, the same is being sent to the Police Station for registration of FIR against unknown persons by hand through Ct. Mandeep Singh 1923. After registration of FIR, its number be informed. Special reports be issued. Control room Patiala be informed



on W/M. I SI alongwith my colleagues and the complainant, heading for conducting search of his son Kasim Mohd. In the area of Near Gurudwara Singh Sabha, Urban Estate, Phase-2, Patiala. Time 4:20 pm. Today on receipt of above said statement, above-mentioned FIR has been registered against unknown persons and record completed through MHC. Copy of FIR is being sent to Illaqa Magistrate and Senior officers as special reports by hand through ASI Balwinder Singh 2070. Control Room, Patiala has been informed through e-mail. Copy of FIR alongwith original statement being sent to SI Gurmeet Singh by hand through Ct. Mandeep Singh.”

3. **Contentions**

On behalf of the petitioner

Learned counsel for the petitioners has argued that the petitioner has been falsely implicated in the present case on the basis of disclosure statement suffered by the co-accused namely Sukhdeep Singh. It is asserted that as far as presence of any medication for sedation is concerned, as per report dated 13.06.2023 (Annexure P-4), no definitive opinion could be given whether medication for sedation was given or not. Moreover, the complainant-Baldev Singh has not supported the prosecution's version and was declared hostile.

On behalf of the State

On the other hand, learned State Counsel appearing on advance notice, accepts notice on behalf of respondent-State and has filed the custody certificate of the petitioner, which is taken on record. According to which the petitioner has suffered incarceration for a period of 2 years, 6 months and 28 days, as of now and is not involved in any other case of any nature whatsoever.

Learned State Counsel has prayed for dismissal of the present petition stating that serious allegations have been levelled against the petitioner. However, he is not in a position to controvert



the fact that the complainant has turned hostile. He informs the Court that in the present FIR challan stands presented on 05.09.2022, wherein, the prosecution has cited total 31 witnesses, out of which 9 have been examined so far, after framing of charges on 09.12.2022.

4. Analysis

Be that as it may, considering the fact that the complainant has turned hostile and there is no definitive opinion with regard to administer of medication for sedation added with the fact that the petitioner is a person of clean antecedents and after framing of charges on 09.12.2022, out of total 31 prosecution witnesses only 9 have been examined, meaning thereby, the conclusion of trial shall take considerable time and as per the principle of the criminal jurisprudence, no one should be considered guilty, till the guilt is proved beyond reasonable doubt, therefore, detaining the petitioners behind the bars for an indefinite period would solve no purpose.

Reliance can be placed upon the judgment of the Apex Court rendered in “***Dataram versus State of Uttar Pradesh and another***”, 2018(2) R.C.R. (Criminal) 131, wherein it has been held that the grant of bail is a general rule and putting persons in jail or in prison or in correction home is an exception. Relevant paras of the said judgment is reproduced as under:-

“2. A fundamental postulate of criminal jurisprudence is the presumption of innocence, meaning thereby that a person is believed to be innocent until found guilty. However, there are instances in our criminal law where a reverse onus has been placed on an accused with regard to some specific offences but that is another matter and does not detract from the fundamental postulate in respect of other offences. Yet another important facet of our criminal jurisprudence is that the grant of bail is the



general rule and putting a person in jail or in a prison or in a correction home (whichever expression one may wish to use) is an exception. Unfortunately, some of these basic principles appear to have been lost sight of with the result that more and more persons are being incarcerated and for longer periods. This does not do any good to our criminal jurisprudence or to our society.

3. There is no doubt that the grant or denial of bail is entirely the discretion of the judge considering a case but even so, the exercise of judicial discretion has been circumscribed by a large number of decisions rendered by this Court and by every High Court in the country. Yet, occasionally there is a necessity to introspect whether denying bail to an accused person is the right thing to do on the facts and in the circumstances of a case.

4. While so introspecting, among the factors that need to be considered is whether the accused was arrested during investigations when that person perhaps has the best opportunity to tamper with the evidence or influence witnesses. If the investigating officer does not find it necessary to arrest an accused person during investigations, a strong case should be made out for placing that person in judicial custody after a charge sheet is filed. Similarly, it is important to ascertain whether the accused was participating in the investigations to the satisfaction of the investigating officer and was not absconding or not appearing when required by the investigating officer. Surely, if an accused is not hiding from the investigating officer or is hiding due to some genuine and expressed fear of being victimised, it would be a factor that a judge would need to consider in an appropriate case. It is also necessary for the judge to consider whether the accused is a first-time offender or has been accused of other offences and if so, the nature of such offences and his or her general conduct. The poverty or the deemed indigent status of an accused is also an extremely important factor and even Parliament has taken notice of it by incorporating an Explanation to section 436 of the Code of Criminal Procedure, 1973. An equally soft approach to incarceration has been taken by Parliament by inserting section 436-A in the Code of Criminal Procedure, 1973.

5. To put it shortly, a humane attitude is required to be adopted by a judge, while dealing with an application for remanding a suspect or an accused person to police custody or judicial custody. There are several reasons for this including maintaining the dignity of an accused person, howsoever poor that person might be, the requirements of Article 21 of the Constitution and the fact that there is enormous overcrowding in



prisons, leading to social and other problems as noticed by this Court in In Re-Inhuman Conditions in 1382 Prisons, 2017(4) RCR (Criminal) 416: 2017(5) Recent Apex Judgments (R.A.J.) 408 : (2017) 10 SCC 658

6. *The historical background of the provision for bail has been elaborately and lucidly explained in a recent decision delivered in Nimesh Tara chand Shah v. Union of India, 2017 (13) SCALE 609 going back to the days of the Magna Carta. In that decision, reference was made to Gurbaksh Singh Sibbia v. State of Punjab, (1980) 2 SCC 565 in which it is observed that it was held way back in Nagendra v. King-Emperor, AIR 1924 Calcutta 476 that bail is not to be withheld as a punishment. Reference was also made to Emperor v. Hutchinson, AIR 1931 Allahabad 356 wherein it was observed that grant of bail is the rule and refusal is the exception. The provision for bail is therefore age-old and the liberal interpretation to the provision for bail is almost a century old, going back to colonial days.*

7. *However, we should not be understood to mean that bail should be granted in every case. The grant or refusal of bail is entirely within the discretion of the judge hearing the matter and though that discretion is unfettered, it must be exercised judiciously and in a humane manner and compassionately. Also, conditions for the grant of bail ought not to be so strict as to be incapable of compliance, thereby making the grant of bail illusory.”*

Therefore, to elucidate further, this Court is conscious of the fundamental principle of law that right to speedy trial is a part of reasonable, fair and just procedure enshrined under Article 21 of the Constitution of India. This constitutional right cannot be denied to the accused as is the mandate of the Apex court in “**Hussainara Khatoon and ors (IV) v. Home Secretary, State of Bihar, Patna**”, (1980) 1 SCC 98. Besides this, reference can be drawn upon that pre-conviction period of the under-trials should be as short as possible keeping in view the nature of accusation and the severity of punishment in case of conviction and the nature of supporting evidence, reasonable apprehension of tampering with the witness or apprehension of threat to the complainant.



5. **Decision:**

In view of the aforesaid discussions made hereinabove, the petitioner is directed to be released on regular bail on his furnishing bail and surety bonds to the satisfaction of the trial Court/Duty Magistrate, concerned.

However, it is made clear that anything stated hereinabove shall not be construed as an expression of opinion on the merits of the case.

The petition in the aforesaid terms stands allowed.

(SANDEEP MOUDGIL)
JUDGE

13.01.2025
sham

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>